STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK RAFFAELLI, Personal Representative of the Estate of TODD F. RAFFAELLI, Deceased,

Plaintiff/Counter-Defendant-Appellant,

v

WILLIAM JOHNSON,

Defendant-Appellee,

and

DAVID MONTICELLO,

Defendant/Counter-Plaintiff.

UNPUBLISHED
May 23, 2000

No. 218892
Houghton Circuit Court
LC No. 98-010504-NZ

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant William Johnson pursuant to MCR 2.116(C)(8) and (C)(10), and from an order denying plaintiff's motion to strike defendant's notice of nonparty fault. We affirm.

This wrongful death action arises out of a collision in which two all-terrain vehicles (ATVs) collided on a private dirt road ("old road") in Elm River Township. Decedent Todd Frederick Raffaelli, who was driving one of the ATVs, died almost instantaneously as a result of the collision.[1] Frederick Raffaelli, the decedent's personal representative, filed the present action against defendant in which he asserted two theories of liability. First, plaintiff alleged that had defendant not erected a barrier along a path between the old road and what the parties referred to as the "new road," the decedent would not have been on the old road at the time of the collision.[2] Second, plaintiff asserted that defendant was negligent in not warning drivers of a "blind corner" on the old road.[3]

We review de novo a trial court's decision to grant or deny summary disposition. *Shields v Shell Oil Co*, 237 Mich App 682, 687; 604 NW2d 719 (1999). In reviewing motions for summary

disposition brought under MCR 2.116(C)(10), trial courts consider the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that no genuine issue exists with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

An essential element of negligence is proximate cause. *Helmus v Dep't of Transportation*, 238 Mich App 250, 255; 604 NW2d 793 (1999). In determining whether a defendant proximately caused the plaintiff's injury, courts analyze whether the plaintiff established (1) the cause in fact, and (2) the legal cause (also known as "proximate cause"). *Id*.

> The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or "proximate cause" normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences. A plaintiff must adequately establish cause in fact in order for legal cause or "proximate cause" to become a relevant issue. [*Helmus*, *supra* at 255-256, quoting *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994) (citations omitted).]

To show proximate or legal cause, a plaintiff must prove that the injury was a probable, reasonably anticipated, and natural consequence of the alleged negligence. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 401; 571 NW2d 530 (1997); *McLean v Rogers*, 100 Mich App 734, 736; 300 NW2d 389 (1980). Proximate cause is generally a factual issue for the trier of fact to decide. However, if reasonable minds could not differ regarding the proximate cause, a trial court should decide the issue as a matter of law. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998). Summary disposition is proper if all reasonable persons would agree that the injury caused to the plaintiff was too insignificantly connected to, or too remotely affected by, the defendant's negligence. *Berry v J & D Auto Dismantlers, Inc*, 195 Mich App 476, 479; 491 NW2d 585 (1992).

In *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 145 (Weaver, J.), 146 (Mallet, J.); 565 NW2d 383 (1997), our Supreme Court determined that no proximate cause existed where the alleged negligence only made the injury possible, but did not put the injury-causing agent in motion. In *Singerman*, the plaintiff was injured at an ice rink when a hockey puck struck him in the eye. *Id.* at 136-137. The plaintiff contended that the defendants' failure to enforce the rink's mandatory helmet rule caused his injury. The plaintiff did not assert that a helmet would have prevented his eye injury. Rather, he contended that if the defendants had ordered him off the ice, he would not have been present at the time the injury occurred. *Id*. at 144-145. The Court concluded that the plaintiff failed to satisfy the proximate cause element of his negligence claim. *Id.* at 145.

We conclude that defendant in this case was not the proximate cause of plaintiff's injury. Plaintiff merely alleged that had the decedent been able to use the cut-across to the new road, the circumstances would not have converged to place him on the old road at the time the collision occurred. A foreseeable risk of harm in defendant's decision to place the stumps along the cut-across was that travelers on the old road, taken by surprise when confronted with the stumps, would be injured when they either collided with the stumps or attempted to avoid them. A probable and natural consequence of defendant's actions did not include a situation in which a person who was unable to access the new road would collide with another vehicle somewhere down the old road. As in *Singerman, supra*, plaintiff in this case contends only that without defendant's alleged negligence, the events would have unfolded such that the decedent would have been in a different location at the time the collision occurred. The causal connection between defendant's actions and the decedent's collision with another vehicle on the old road was simply too attenuated. Because reasonable minds could not differ regarding the issue of proximate cause, we conclude that the trial court did not err in granting plaintiff's motion for summary disposition.[4]

We also note that questions of duty and proximate cause are interrelated because both questions depend in part on foreseeability. *Babula v Robertson*, 212 Mich App 45, 53; 536 NW2d 834 (1995); *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995); *Moning v Alfono*, 400 Mich 425, 439; 254 NW2d 759 (1977). Because we conclude that defendant's injury was not reasonably foreseeable, we also conclude that defendant breached no duty to decedent when he placed the stumps along the cut-across. Moreover, defendant did not owe the decedent a duty to warn him about the alleged "blind corner" on the old road. Defendant had no duty to warn of alleged dangers that were not located on his property. See, e.g., *Rodriguez v Detroit Sportsmen's Congress*, 159 Mich App 265, 272-273; 406 NW2d 207 (1987); *Swartz v Huffmaster Alarms Systems Inc*, 145 Mich App 431, 435; 377 NW2d 393 (1985).

Plaintiff also asserts that the trial court abused its discretion in accepting an officer's testimony that speed and alcohol were factors in causing the collision, and that the court abused its discretion in denying plaintiff's motion to strike defendant's notice of nonparty fault. Because we have already determined that the trial court correctly granted summary disposition in favor of defendant, we find resolution of these issues to be unnecessary.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell

[1] Plaintiff also sued David Monticello, the driver of the other vehicle, and Monticello filed a counterclaim against plaintiff. Monticello and plaintiff settled, and Monticello is not a party to this appeal.

[2] The new road was made of gravel and ran parallel to the old road for some distance. Defendant built the road at his own expense, and placed the stumps along the cut-across because he was in the process of relocating the new road.

[3] The complaint also contained a claim of "nuisance." Plaintiff does not challenge the propriety of the trial court's dismissal of this claim.

[4] We also have serious doubts that defendant was the cause in fact of the collision. The cause in fact element generally requires a showing that the plaintiff's injury would not have occurred "but for" the defendant's actions. *Skinner*, *supra* at 163; *Helmus*, *supra* at 256. Whether the decedent would have opted to take the new road instead of the old road if defendant had not placed the stumps along the cut-across is a matter of speculation and conjecture which is insufficient to establish causation in fact. *Skinner*, *supra* at 164; *Helmus*, *supra* at 257.